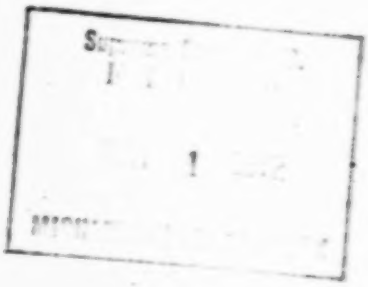
SUPREME COURT, U. S.

In the Supreme Court of the United States



October Term, 1971

No. 71-1443

CALIFORNIA DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT, et al.,
Petitioner,

vs.

ELLENMAE CROW, et al.,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Memorandum Opposing Certiorari

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A writ of certiorari to review a case pending in a court of appeals, prior to a decision by such court, "will be granted only upon a showing that the case is of such imperative importance to justify the deviation from normal appellate procedures and to require immediate settlement in this court." S.Ct. Rule 20. The California Department of Human Resources Development (hereinafter "the Department") asserts that this is an appropriate case for review before decision by the court of appeals because unless certiorari is granted, "[p]etitioner is in the precarious position of possibly losing a case involving well over

$50 million per year without this court having reviewed the matter on the merits." (Petition App. C at 17). This assertion is both factually inaccurate and ignores the limited scope of review exercised by this Court pursuant to Rule 20.

The Department's contention that this litigation involves tens of millions of dollars per year is wholly fanciful.[1] In arriving at its estimates, the Department incorrectly assumes: (1) that all recipients whose benefit payments are suspended or terminated will request an evidentiary hearing, regardless of whether they have returned to work, died, agree with the Department's decision, or for other reasons do not contest the Department's action; (2) that all recipients who request hearings will lose them, despite the fact that recipients presently win over one-third of all hearings; (3) that even if a termination is not based on disputed facts or legal questions, an unemployment compensation recipient who requests an evidentiary hearing would have to be paid benefits pending the hearing;[2] (4) that all benefits improperly paid pending a hearing will be unrecoverable, despite the fact that the Department presently recovers approximately 65% of all benefit overpayments, *California Department of Human Resources Development* v. *Java*, 402 U.S.

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[1]In California Department of Human Resources Development v. Java, 402 U.S. 121 (1971), the Department asserted that an adverse decision would cost California $18 million per year. Cal. Br. at 16, n. 10. However, the accurate figure was $335,836. Appellees' Br. at 47-48.

[2]The district court's order requires a hearing only for "persons who have timely contested factual allegations." Petition App. A at 10.

121, 129 n. 8 (1971); and (5) that the Department can do nothing to shorten the inordinately long time it takes before holding administrative hearings.

Normal appellate procedures are more than adequate to protect the Department's interests in this case. Should this Court note jurisdiction in *Indiana Employment Security Division* v. *Burney*, No. 71-1119, the Department as *amicus curiae* can inform the Court of its view of the law and of any significant factual considerations which may affect California.[3] There is nothing whatsoever to indicate that the Court of Appeals for the Ninth Circuit is incapable of deciding this case in a proper and orderly manner.

In light of this Court's burgeoning docket[4] and the frequency with which cases presenting similar questions are filed in the lower courts,[5] this Court of necessity has taken an increasingly restrictive view of its discretion to grant certiorari prior to a decision by a court of appeals. This extraordinary procedure has in recent years been implemented in such unusual circum-

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[3]The Department need not obtain consent of the parties or leave of the Court prior to filing an amicus brief on the merits. S. Ct. Rule 42(4).

[4]In the 1970 Term, the Court considered approximately 3318 cases, but disposed of only 141 by written opinions. *See* Note, *The Supreme Court: 1970 Term*, 85 HARV. L. REV. 3, 346 (1971).

[5]When this Court in Richardson v. Wright, 405 U.S. 208, *rehearing denied*, ... U.S. ....., 40 L.W. 3470 (1972) considered the question of whether a prior hearing was required in terminating Social Security disability benefits, there were then seventeen lower court cases pending in which the same issue was presented. *See* Richardson v. Wright, supra, 405 U.S. at 212-213, n. 1 (Brennan, J.) (dissenting opinion). Should the Court adopt a practice of granting review of cases pending in lower courts whenever the identical issue is being considered by this Court, its docket would soon be overwhelmed.

stances as where an immediate emergency exists[6] or where separate cases have interrelated facts and parties[7] or where profound and novel constitutional questions are raised.[8] While important, the present case does not rise to these dimensions. By-passing the normal appellate process hence is unnecessary to achieve an orderly and complete consideration of the issues raised.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied.

Dated: May 30, 1972.

Respectfully submitted,

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[6] *See* United States v. Thomas, 361 U.S. 950 (1960); Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).

[7] *See* New Haven Inclusion Cases, 399 U.S. 392 (1970); McCulloch v. Sociedad Nacional, 372 U.S. 10, 12 (1963); Hannah v. Slawson, 363 U.S. 420 (1960).

[8] *See* McElroy v. Guagliardo, 361 U.S. 281, 283 (1960); Brown v. Board of Education, 344 U.S. 1, 3 (1954); *but cf.* Taylor v. McElroy, 358 U.S. 918 (1958).